

**AN ORDINANCE AMENDING TITLE 17,  
THE SUBDIVISION CONTROL ORDINANCE, AND  
CHAPTER 15.05 PERTAINING TO BUILDING REQUIREMENTS,  
OF THE EVANSVILLE MUNICIPAL CODE**

**FILED**

NOV 14 2014

*Anna Windner*  
CITY CLERK

WHEREAS, pursuant to I.C. § 36-7-4-201, a unit may regulate local land use and planning; and

WHEREAS, pursuant to I.C. § 36-7-4-701 et seq., a unit must regulate standards and procedures for subdivision control, which is the basis for the various standards for the design of subdivisions and the public ways and utilities contained in them as set forth in the subdivision control ordinance at Title 17 of the Municipal Code of the City of Evansville, Indiana; and

WHEREAS, pursuant to I.C. § 36-7-4-702 establishes procedures and requirements for primary approval of subdivision plats, and delegates to the unit the responsibility to specify in the subdivision control ordinance standards for determining whether a plat qualifies for primary approval, which requires inclusion of various improvements such as public areas, public ways such as roads and sidewalks, and extension of municipal services; and

WHEREAS, pursuant to I.C. 36-7-4-709, a unit may choose to allow secondary approval and recordation of the plat prior to the completion of the improvements on which primary approval was based, but only if the subdivider provide and maintain proof of financial responsibility in a satisfactory amount to ensure that the improvements will be completed and installed in compliance with the ordinance, until all improvements are properly completed and installed; and

WHEREAS, historically the proof of financial responsibility has been provided in the form of an Irrevocable Letter of Credit in an amount estimated to cover the cost of the required improvements as of the date it is issued; and

WHEREAS, while the face value of the Letters of Credit are frequently reduced upon annual renewal to reflect partial completion of improvements, as certified by the City Engineer, the current ordinance at EMC § 17.05.100 does not provide any mechanism for that value to increase to reflect increases in costs over the period of time the improvements remain incomplete; and

WHEREAS, in cases where the City has been and will in the future be required to draw upon the Letter of Credit and incur the cost of installing the remaining required improvements, or of re-installing or correcting improvements that do not comply with the required standards, the remaining value of the Letter of Credit has been and will in the future be insufficient to reimburse the City for the full cost actually incurred; and

WHEREAS, historically the last required improvements to be completed in a subdivision are the sidewalks, which are generally installed on a lot-by-lot basis by each purchaser of the individual lots within the subdivision, and which, as a result, may not be completed until many years after the initial development and platting; and

WHEREAS, maintaining the Letters of Credit in force until all sidewalks are installed according to relevant standards places an inordinate burden upon the subdivider that should actually be borne by the purchaser as part of the purchaser's responsibilities under the ordinance and frequently under requirements of title such as restrictive covenants; and

WHEREAS, a more efficient and appropriate mechanism to address and ensure proper completion of the required sidewalks would be, at the option of the subdivider, to exempt the cost of the sidewalks from the required amount of the Letter of Credit, such that the Letter of Credit is not required for completion of the sidewalks, and instead to require such completion as a condition to be met prior to issuance of a Certificate of Occupancy under Chapter 15.05 of the Evansville Metropolitan Code, which is enforced by the Building Commissioner in conjunction with the City Engineering Department; and

WHEREAS, in the event the sidewalks are not completed or corrected in accordance with the required standards within the requisite time period, the City would still have the right to cause the sidewalks to be completed or corrected, and would be able to recover the costs of doing so under the provisions of I.C. § 36-1-6-2, which provides authority for the City to undertake such completion or correction and provides that the costs of doing so may be recovered from the owner and, if unpaid, not only become a lien against the property that further protected against incurring the costs of completing or correction of the sidewalk installation, but can also be placed on the tax duplicate for the parcel by the County Auditor in accordance with the procedures prescribed by state law; and

WHEREAS, the City is required to participate in the enforcement of certain public accommodation standards under the federal Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, relating to sidewalk accessibility, which standards should be incorporated by reference into the development standards under the subdivision control ordinance; and

WHEREAS, certain language currently contained in the subdivision control ordinance requires technical revisions to more effectively reflect and serve the purposes of the ordinance; and

WHEREAS, the Common Council of the City of Evansville, Indiana desires to provide flexibility in the mechanisms for subdividers to obtain secondary approval of proposed subdivision plats in such a way as to avoid unnecessary burdens while still providing legal and financial enforcement mechanisms for ensuring compliance with necessary design standards and otherwise serving the purposes of the subdivision control ordinance and the other provisions of the Evansville Metropolitan Code;

**NOW THEREFORE, BE IT ORDAINED** by the Common Council of the City of Evansville, Indiana, as follows:

**Section 1. Amendment of Section 17.05.010—"DEFINITIONS".**

The Evansville Municipal Code is hereby amended at Section 17.05.010, entitled "Definitions," by completely replacing the existing definition of "Basic Improvements" with the following:

"Basic improvements" means all storm sewers, sanitary sewers, water lines, streets, curbs, gutters, sidewalks, alternative walkways permitted in lieu of or in combination with sidewalks, and any stormwater drainage facilities including, but not limited to, retention/detention facilities or other facilities of which the City or other appropriate local entity would normally accept the maintenance and operational responsibility.

The Evansville Municipal Code is hereby amended at Section 17.05.010, entitled "Definitions," by completely replacing the existing definition of "Improvements" with the following:

"Improvements" means all storm sewers, sanitary sewers, water lines, water supply lines, gas lines, electrical lines, telephone lines, streets, curbs, gutters, sidewalks, alternative walkways permitted in lieu of or in combination with sidewalks, and any stormwater drainage facilities including, but not limited to, retention/detention facilities.

**Section 2. Amendment of Section 17.05.100—"SECONDARY APPROVAL".**

The Evansville Municipal Code is hereby amended at Section 17.05.100, entitled "Secondary Approval," by completely replacing all existing language of said Section with the following:

**17.05.100 Secondary approval**

(A) The Area Plan Commission may grant secondary approval of a plat or replat under this Title or may delegate authority to the Executive Director to grant such secondary approval.

(B) No notice and hearing are required for secondary approval.

(C) The purpose of secondary approval is to ensure that the plat reflects all terms, conditions, and commitments given by the subdivider or required by the Area Plan Commission at the hearing on primary approval.

(D) A plat of a subdivision may not be filed with the Vanderburgh County Auditor, and the Recorder may not record it, unless it has been granted secondary approval and signed and certified by the Executive Director.

(E) Secondary approval may be granted to a plat for a subdivision in which the basic improvements and installations have not been completed as required by this Chapter, but only if the following requirements are met:

(1) The subdivider must:

(a) provide a letter of credit issued by a bank or other financial institution, in a form(s) prescribed by the Area Plan Commission, that:

(i) is in an amount determined by the Area Plan Commission to be sufficient to complete the basic improvements and installations in compliance with the ordinance, which amount must include an estimate of all known costs plus a contingency allowance equal to 10% of known costs; and

(ii) provides security by a bank or financial institution satisfactory to the Area Plan Commission; or

(b) as to installation of sidewalk basic improvements only, comply with and set forth in a certificate on the plat the following requirements:

(i) Each purchaser of, or successor in interest to, an individual lot or lots from the owner of record at the time the plat is recorded must install the required sidewalk(s) on the purchased lot or lots within five (5) years from the date of purchase or acquisition of interest.

(ii) The owner of record at the time the plat is recorded must install the required sidewalk(s) on all lots to which the owner still holds title within ten (10) years from the date the plat is recorded.

(iii) No certificate of occupancy will be granted for any new building on any lot in the subdivision unless and until the required sidewalk on that lot is installed.

(iv) Sidewalks installed in a new subdivision must be installed to the standards meeting the latest edition of the Evansville Municipal Code and all applicable standards required by the Americans with Disabilities Act (ADA) and regulations thereunder.

(v) Failure to install a required sidewalk in accordance with all ordinances and in the time allotted in this subsection is an ordinance violation that may be corrected by City employees or contractors in accordance with the provisions of IC 36-1-6-2 and any amendment or recodification thereof, with both the direct and administrative costs of such correction being a lien against the property and being eligible to be placed on the tax duplicate by the County Auditor in accordance with the procedures prescribed by state law.

(2) All letters of credit pursuant to this subsection must be written in the amount of the estimate and contain the language and terms set forth in a letter of credit form(s) approved by the Area Plan Commission. Letters of credit that do not comply with the Area Plan Commission form(s), that are written for amounts that do not reflect the approved cost estimate, or that are based on unacceptable cost estimates, will be returned to the financial institution. In the event a letter of credit is not accepted and is returned, an acceptable letter of credit must be filed with the Area Plan Commission before the plat can be recorded. All letters of credit issued must contain the following clauses:

The liability and obligations of the issuer of this letter of credit shall be governed by the laws of the State of Indiana. In the event of any dispute or controversy arising out of this letter of credit, the issuer agrees that the forum for any cause of action filed by any party shall be the County of Vanderburgh.

(3) Any money received from the letter of credit required under this subsection must be used only for making the basic improvements and installations for which the letter of credit is provided.

(4) The basic improvements or installations, whether completed by the property owner, the City, or otherwise, must conform to the standards of such basic improvements or installation as provided by this code of ordinances, including the Subdivision Control Ordinance, as well as those standards for basic improvements or installations as set forth by all agencies that assist in reviewing and commenting upon the technical requirements of the Subdivision Control Ordinance or that are responsible for maintaining any improvements within a subdivision as defined by the Subdivision Control Ordinance.

(F) The Area Plan Commission shall, by rule, prescribe the procedure for determining whether all basic improvements and installations have been constructed and completed as required by the Subdivision Control Ordinance. The rule must designate the person or persons responsible for making the determination.

(G) A person desiring the secondary approval of a plat or replat of land for subdivision must submit to the Area Plan Commission the plat of the proposed subdivision with the required certificates attached. The following certificates must be affixed to the plat before recording:

(1) by the registered Professional Surveyor to the effect that the plat represents a survey made by him, that all monuments shown thereon exist, and that their locations are as shown;

(2) by the owner or owners, a notarized statement that he is the owner of the lands and that the platting of the subdivision is his voluntary act and deed, and the owner must also declare in this certificate by description or reference to the plat the purpose of all rights-of-way, easements, and other reservations shown on the plat;

(3) by the Area Plan Commission, fixed with the seal of the Area Plan Commission, signed by the President or presiding officer of the Area Plan Commission, and attested to by the Executive Director of the Area Plan Commission, and the certificate must also disclose that proper public notice was given and that a majority of the members of the Area Plan Commission concur in its approval;

(4) by the Executive Director of the Area Plan Commission to the Vanderburgh County Recorder that the plat complies with the provisions of this section;

(5) by the President of the Board of Public Works certifying that all drainage plans conform to the current design standards adopted by the Board of Public Works; and

(6) by the Board of Public Works certifying that all street construction plans conform to the current design standards adopted by the Board of Public Works.

(H) Except as provided for in subsection (I) of this section, a plat or replat of a subdivision must be recorded by the following deadlines, or the primary approval given by the Area Plan Commission shall be null and void:

(1) for major subdivisions, within five (5) years from the year in which primary approval was granted; however, the Area Plan Commission may extend the time for recording a plat in up to five (5) year increments upon written request by the subdivider prior to the plat expiration;

(2) for minor subdivisions, within one (1) year from the year in which primary approval was granted; however, the Area Plan Commission may extend the time for recording a plat in up to one (1) year increments upon written request by the subdivider prior to the plat expiration.

(I) Secondary Approval in Sections.

(1) Plats that have been granted primary approval after the adoption of the ordinance codified in this Title may be submitted for secondary approval in sections with the approval of the Executive Director of the Area Plan Commission and in accordance with this subsection.

(2) Additional sections may be submitted for secondary approval without repeating primary approval if they substantially conform to the geometrics of the original primary plat.

(3) The plat may be deemed to substantially conform to the primary plat if the geometrics of the secondary plat are substantially the same layout. The removal of a right-of-way for a public street that precludes street construction or compliance with the requirements of this Title and additions to the total number of lots shall result in resubmission of the plat for primary approval. The addition or removal of easements to accommodate utilities or drainage shall not constitute a substantial change in conformity unless the secondary plat removes needed off-site easements shown on the primary plat.

(4) With the recording of any section of the approved primary plat, the period for recording the secondary plat as established in Subsection (H) of this Section is automatically renewed for another five (5) years as to major subdivisions and another one (1) year as to minor subdivisions.

### **Section 3. Amendment of Section 17.05.150—"REQUIRED IMPROVEMENTS".**

The Evansville Municipal Code shall be amended at Section 17.05.150, entitled "Required improvements," by completely replacing all existing language in subsection (B) with the following:

#### **(B) Curbs, Gutters, and Sidewalks.**

##### **(1) Curbs and Gutters.**

(a) The subdivider must provide curbs and gutters for all streets within and bounding the subdivision.

(b) Curbs and gutters must conform to the standards adopted by the City of Evansville Board of Public Works, or its successor.

##### **(2) Sidewalks.**

(a) The subdivider must provide sidewalks for all streets within and bounding the subdivision, except where this requirement is specifically waived or modified by the Area Plan Commission and, where required herein, the Board of Public Works, subject to the following:

(i) This requirement must only be waived or modified in a manner consistent with the purposes of this Title, and any such action must be accompanied by approval of a plan showing proposed sidewalks and any alternative walkways instead of, or in combination with, sidewalks.

(ii) Subdivisions in which all lots are a minimum of one (1) acre are eligible for waiver or modification of this requirement.

(iii) For subdivisions in which one (1) or more building lot is less than one (1) acre, this requirement shall only be modified pursuant to a plan that includes sidewalks and/or alternative walkways and that is approved by both the Area Plan Commission and the Board of Public Works.

(b) Sidewalks and alternative walkways must conform to the standards adopted by the Board of Public Works or its successor, and to all applicable standards required by the Americans with Disabilities Act (ADA) and the regulations thereunder.

(i) Sidewalks must conform to the established location and width of existing sidewalks within the same block, but must not be less than four feet in width.

(ii) In commercial and other congested areas, the Area Plan Commission may require sidewalks of greater width constructed adjacent to the curb.

(iii) The subdivider must provide a plan showing the location of each sidewalk, ADA compliant ramp, and alternative walkway, if any.

**Section 4. Amendment of Section 15.05.030—"EFFECT OF ZONING REGULATIONS".**

The Evansville Municipal Code shall be amended at Section 15.05.030, entitled "Effect of Zoning Regulations," by replacing all existing language of said Section with the following:

**15.05.030 Effect of zoning regulations.**

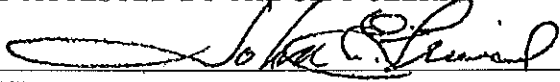
(A) Zoning laws and ordinances and the rules and regulations of the Evansville-Vanderburgh County Area Plan Commission, insofar as they pertain to building construction, occupancy, or areas, frontage, and classification and locations of buildings, shall not be construed so as to invalidate any of the laws, rules, regulations, orders, or bulletins issued by or under the authority of the Evansville-Vanderburgh County Building Commissioner.

(B) To the extent not inconsistent with the provisions of this Chapter, the development standards set forth in the zoning laws and ordinances, the subdivision control ordinances, and the rules and regulations of the Evansville-Vanderburgh County Area Plan Commission are hereby incorporated by reference into this Chapter, and compliance with those standards shall be required for the issuance of a Certificate of Occupancy under this Chapter.

**Section 5. Effective Date.**

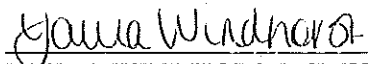
This ordinance shall be in full force and effect upon final passage by the Common Council of the City of Evansville.

PASSED BY THE COMMON COUNCIL OF THE CITY OF EVANSVILLE INDIANA ON THE 15 DAY OF December, 2014, ON SAID DAY SIGNED BY THE PRESIDENT OF THE COMMON COUNCIL AND ATTESTED BY THE CITY CLERK


  
\_\_\_\_\_  
PRESIDENT  
COMMON COUNCIL OF THE CITY OF EVANSVILLE

ATTEST: 

PRESENTED TO ME, THE UNDERSIGNED CITY CLERK OF THE CITY OF EVANSVILLE, INDIANA, TO THE MAYOR OF SAID CITY, THIS 17 DAY OF December, 2014 AT 4 O'CLOCK P M FOR HIS CONSIDERATION AND ACTION THEREON.

  
\_\_\_\_\_  
LAURA WINDHORST, CITY CLERK  
CITY OF EVANSVILLE, INDIANA

HAVING EXAMINED THE FOREGOING ORDINANCE, I DO NOW, AS MAYOR OF THE CITY OF EVANSVILLE, INDIANA, APPROVE SAID ORDINANCE AND RETURN THE SAME TO THE CITY CLERK THIS 19th DAY OF December, 2014.

  
\_\_\_\_\_  
LLOYD WINNECKE, MAYOR  
CITY OF EVANSVILLE, INDIANA

APPROVED AS TO FORM:

  
\_\_\_\_\_  
TED C. ZIEMER, JR., CORPORATION COUNSEL